IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9628 OF 2004

Shri.Arun Keshav Joshi ..Petitioner.

Vs.

Shri.Autinio B. D'Souza ..Respondent.

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Mr.P.S.Dani for the Petitioner.

Mr.Dushyant Purekar h/f Ms.Shilpa Joshi for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

8th April, 2005.

P.C. :

The Petitioner is the Plaintiff in Regular Civil Suit No.131 of 2004 instituted before the Joint Civil Judge, Junior Division, Panvel for a declaration that the powers of attorney executed in favour of the Plaintiff are valid and subsisting and for an injunction restraining the Respondent, who is the Original Defendant from receiving any part of the compensation that is due and payable under awards of the Civil Judge, Senior Division,

in two Land Acquisition References (LARs 74/2003 and 75/2003). An application was moved by the Respondent under Section 9-A of the Code of Civil Procedure, 1908 questioning the pecuniary jurisdiction of the learned Civil Judge, Junior Division on the ground that the total amount involved in the Land Acquisition References was Rs.2.99 lacs and Rs.83.66 lacs and therefore, the subject matter of the suit lay outside the pecuniary jurisdiction of the Trial Judge. That application was allowed by the impugned order dated 6th November, 2004. The learned Trial Judge was of the view that the Plaint would have to be returned for presentation before the appropriate Court.

The limited grievance which has been urged in these proceedings is that the learned Trial Judge having held that he did not have pecuniary jurisdiction to entertain and try the suit ought to have passed an order for return of the Plaint for presentation before the appropriate Court. The operative order of the Trial Court, however, while allowing the application is to order the Plaintiff to correct the valuation of the Plaint in accordance with the amount of

compensation. An ex-parte interim injunction which had been operative has also been vacated.

Counsel appearing on behalf of the Petitioner states that the order vacating the interim injunction has been challenged independently in appeal. Since an Appeal from Order under Order 43 would be maintainable against the order of the Learned Trial Judge directing the return of the Plaint for presentation before the proper Court, it is not necessary for this Court to express any opinion upon the merits of the order dated 6th November, 2004. All that is really necessary in these proceedings is for the Court to observe that the order of the Civil Judge, Junior Division dated 6th November, 2004 is an order directing the return of the Plaint for presentation before the appropriate Court and that the aforesaid order must be read and treated as such. Since the Petitioner has already filed an appeal against the impugned order in so far as it vacated the interim injunction, on the request of counsel for the Petitioner it is clarified that it would be open to the Petitioner to seek an amendment of the memo of appeal so as to challenge that part of the impugned

order in so far as it relates to the return of the Plaint for presentation before the appropriate Court. The Petition is accordingly disposed of.